

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellants : W. Daniel Hillis, et al.  
Application No. : 10/734,650  
Confirmation No. : 9087  
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TITLE : ACCELERATED RECEPTION OF SPATIAL-TO-TEMPORAL  
TRANSLATED DATA  
Examiner : Frantz B. Jean  
Art Unit : 2154  
Docket No. : SE1-0002C1-US  
(formerly 0803-003-005B-000000)  
Customer No. : 80118

Mail Stop Appeal Brief  
Commissioner for Patents  
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**APPELLANT'S BRIEF**

Dear Madam or Sir:

This paper is responsive to the Advisory Action mailed on February 12, 2009, and to the underlying Final Office Action dated October 30, 2008.

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## **I. REAL PARTY IN INTEREST**

The real party in interest on this appeal is Searete, LLC by virtue of assignments of the inventors recorded on May 24, 2004, at Reel 015362 and Frame 0490. Searete, LLC is wholly owned by Intellectual Ventures Management LLC.

## **II. RELATED APPEALS AND INTERFERENCES**

Appellant's legal representative and the real party in interest are unaware of any appeal or interference which will directly affect, be directly affected by, or have a bearing on the Board's decision in the present appeal.

### **III. STATUS OF CLAIMS**

Claims 1-80 are pending. None of the claims have been cancelled. (*Please see Appendix A*).

Claims 1-80 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 6,345,028 to Jaeger (hereinafter “Jaeger”). (*Please see Final Office Action*, p. 4).

The Specification is objected to on grounds that the Abstract and Title are insufficient. (*Please see Final Office Action*, p. 3).

Claims 1-80 also stand rejected under 35 USC § 112, second paragraph, as being indefinite. (*Please see Final Office Action*, p. 3).

Appellant appeals the rejections of claims 1-80 under 35 U.S.C. §102(b).<sup>1</sup>

All pending claims are attached as Appendix A.

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<sup>1</sup> Appellant will eagerly and cooperatively work with the Examiner to resolve the Examiner’s objections to Specification, and the Examiner’s concerns regarding the alleged indefiniteness of the claims, after the issues in this appeal have been resolved.

#### **IV. STATUS OF AMENDMENTS**

An Amendment under 37 C.F.R. 1.116 filed July 7, 2008 in response to the Examiner's Non-Final Office Action mailed April 7, 2008 has been entered, however, a proposed Amendment filed January 27, 2009 in response to the Examiner's Final Office Action mailed October 30, 2008, has been refused entry by the Examiner.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Examiner rejections of three sets of claims<sup>2</sup> are appealed herein: (i) Independent Claim 1 and its Dependent Claims 2-36; (ii) Independent Claim 37 and its Dependent Claims 38-72; and (iii) Independent Claim 73 and its Dependent Claims 74-80.

### **A. Summary of Independent Claim 1 and its Dependent Claims 2-36**

Support for these claims appears throughout Appellant's application, and also in those specific locations specified below.

In one instance, a method includes receiving a request for data having at least one specific content; obtaining one or more first-network temporal addresses corresponding to the at least one specific content in response to the request for data having the at least one specific content; obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content; applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and constructing the at least

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<sup>2</sup> Appellant respectfully points out that in accordance with 37 CFR §41.37(c)(1)(v), Appellant herein provides a "summary of claimed subject matter [having a] concise explanation of the subject matter defined in each of the independent claims involved in the appeal, which shall refer to the specification by page and line number, and to the drawing, if any, by reference characters. For each independent claim involved in the appeal and for each dependent claim argued separately under the provisions of paragraph (c)(1)(vii) of this section, every means plus function and step plus function as permitted by 35 U.S.C. §112, sixth paragraph, must be identified and the structure, material, or acts described in the specification as corresponding to each claimed function must be set forth with reference to the specification by page and line number, and to the drawing, if any, by reference characters." However, Appellant respectfully points out that the herein-provided summary is illustrative only and is NOT intended to be in any way limiting. Appellant is providing this summary under protest that the USPTO's regulations in this area exceed its statutory authority (*e.g. are ultra vires*).

one content from the first part and the second part. *See specification at, e.g., page 2, lines 5-11 (Independent Claim 1).*

In another instance of the method, the receiving a request for data having at least one specific content includes, but is not limited to, receiving a request for at least a portion of recorded video. *See specification at, e.g., page 2, lines 13-15 (Dependent Claim 2).*

In one instance of the method, the receiving a request for data having at least one specific content includes, but is not limited to, receiving a request for at least a portion of recorded audio. *See specification at, e.g., page 2, lines 16-18 (Dependent Claim 3).*

In one instance of the method, the receiving a request for data having at least one specific content includes, but is not limited to, receiving a request for at least a portion of recorded audio and video. *See specification at, e.g., page 2, lines 19-21 (Dependent Claim 4).*

In one instance of the method, the receiving a request for data having at least one specific content includes, but is not limited to, receiving a request for at least a portion of at least one of computer processable and network processable data. *See specification at, e.g., page 2, lines 22-24 (Dependent Claim 5).*

In one instance of the method, the obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content includes, but is not limited to, associating the specific content with one or more times of one or more first network transmitted data portions. *See specification at, e.g., page 2, line 25 – page 3, line 3 (Dependent Claim 6).*

In one instance of the method, the associating the specific content with one or more times of one or more first network transmitted data portions includes, but is not limited to, consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions. *See specification at, e.g., page 3, lines 4-7 (Dependent Claim 7).*

In one instance of the method, the consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions includes, but is not limited to, consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller. *See specification at, e.g., page 3, lines 8-12 (Dependent Claim 8).*

In one instance of the method, the consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller includes, but is not limited to, accepting input of the first-network schedule published by at least one of the first-network source controller and the first-network source switch controller. *See specification at, e.g., page 3, lines 13-17 (Dependent Claim 9).*

In one instance of the method, the consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions includes, but is not limited to, consulting a first-network schedule received from at least one of a first-network source controller and a first-network source switch controller. *See specification at, e.g., page 3, lines 18-22 (Dependent Claim 10).*

In one instance of the method, the consulting a first-network schedule received from at least one of a first-network source controller and a first-network

source switch controller includes, but is not limited to, receiving the first-network schedule from a data stream. *See specification at, e.g., page 3, lines 23-26 (Dependent Claim 11).*

In one instance of the method, the associating the specific content with one or more times of one or more first network transmitted data portions includes, but is not limited to, associating the specific content with at least one absolute time associated with a clock. *See specification at, e.g., page 4, lines 1-3 (Dependent Claim 12).*

In one instance of the method, the associating the specific content with at least one absolute time associated with a clock includes, but is not limited to, associating the specific content with at least one absolute time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to some specified received data. *See specification at, e.g., page 4, lines 4-8 (Dependent Claim 13).*

In one instance of the method, the associating the specific content with at least one absolute time associated with a clock includes, but is not limited to, associating the specific content with at least one absolute time associated with a transmitted clock. *See specification at, e.g., page 4, lines 9-11 (Dependent Claim 14).*

In one instance of the method, the associating the specific content with one or more times of one or more first network transmitted data portions includes, but is not limited to, associating the specific content with at least one relative time. *See specification at, e.g., page 4, lines 12-14 (Dependent Claim 15).*

In one instance of the method, the associating the specific content with at least one relative time includes, but is not limited to, associating the specific content with

at least one time relative to a received marker. *See specification at, e.g., page 4, lines 15-17 (Dependent Claim 16).*

In one instance of the method, the associating the specific content with at least one relative time includes, but is not limited to, associating the specific content with at least one time of a first and a second received marker. *See specification at, e.g., page 4, lines 18-20 (Dependent Claim 17).*

In one instance of the method, the obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content includes, but is not limited to, associating the specific content with one or more times of one or more second network transmitted data portions. *See specification at, e.g., page 4, lines 21-25 (Dependent Claim 18).*

In one instance of the method, the associating the specific content with one or more times of one or more second network transmitted data portions includes, but is not limited to, consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions. *See specification at, e.g., page 4, line 26 – page 5, line 2 (Dependent Claim 19).*

In one instance of the method, the consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions includes, but is not limited to, consulting a second-network schedule published by at least one of a second-network source controller and a second-network source switch controller. *See specification at, e.g., page 5, lines 3-7 (Dependent Claim 20).*

In one instance of the method, the consulting a second-network schedule published by at least one of a second-network source controller and a second-network

source switch controller includes, but is not limited to, accepting input of the second-network schedule published by at least one of the second-network source controller and the second-network source switch controller. *See specification at, e.g., page 5, lines 8-12 (Dependent Claim 21).*

In one instance of the method, the consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions includes, but is not limited to, consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch controller. *See specification at, e.g., page 5, lines 13-17 (Dependent Claim 22).*

In one instance of the method, the consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch includes, but is not limited to, receiving the second-network schedule from a data stream. *See specification at, e.g., page 5, lines 18-21 (Dependent Claim 23).*

In one instance of the method, the associating the specific content with one or more times of one or more second network transmitted data portions includes, but is not limited to, associating the specific content with at least one absolute time associated with a clock. *See specification at, e.g., page 5, lines 22-24 (Dependent Claim 24).*

In one instance of the method, the associating the specific content with at least one absolute time associated with a clock includes, but is not limited to, associating the specific content with at least one time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks

relative to some specified received data. *See specification at, e.g., page 5, line 25 – page 6, line 2 (Dependent Claim 25).*

In one instance of the method, the associating the specific content with at least one absolute time associated with a clock includes, but is not limited to, associating the specific content with at least one absolute time associated with a transmitted clock. *See specification at, e.g., page 6, lines 3-5 (Dependent Claim 26).*

In one instance of the method, the associating the specific content with one or more times of one or more second network transmitted data portions includes, but is not limited to, associating the specific content with at least one relative time. *See specification at, e.g., page 6, lines 6-8 (Dependent Claim 27).*

In one instance of the method, the associating the specific content with at least one relative time includes, but is not limited to, associating the specific content with at least one time relative to a received marker. *See specification at, e.g., page 6, lines 9-11 (Dependent Claim 28).*

In one instance of the method, the associating the specific content with at least one relative time includes, but is not limited to, associating the specific content with at least one time of a first and a second received marker. *See specification at, e.g., page 6, lines 12-14 (Dependent Claim 29).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, agglomerating a portion of the at least one content received from the first network with a portion of the at least one content received from the second network. *See specification at, e.g., page 6, lines 15-18 (Dependent Claim 30).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, interleaving a

portion of the at least one content received from the first network with a portion of the at least one content received from the second network. *See specification at, e.g., page 6, lines 19-22 (Dependent Claim 31).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, selecting data from at least one data stream having file-address -to-temporal- address translated data. *See specification at, e.g., page 6, lines 23 –25 (Dependent Claim 32).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, selecting data from at least one data stream having disk-address -to-temporal- address translated data. *See specification at, e.g., page 7, lines 1-3 (Dependent Claim 33).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, selecting data from at least one data stream having tape-address -to-temporal- address translated data. *See specification at, e.g., page 7, lines 4-6 (Dependent Claim 34).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, selecting data from at least one data stream having substantially static memory-address-to-temporal-address translated data. *See specification at, e.g., page 7, lines 7-10 (Dependent Claim 35).*

In one instance of the method, the constructing the at least one content from the first network and the second network includes, but is not limited to, selecting data from at least one data stream having object-address -to-temporal- address translated data. *See specification at, e.g., page 7, lines 11-13 (Dependent Claim 36).*

**B. Summary of Independent Claim 37 and its Dependent Claims 38-72**

Support for these claims appears throughout Appellant's application.

In one instance, a system includes, but is not limited to, means for receiving a request for data having at least one specific content; means for obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content; means for obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content; means for applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network and applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and means for constructing the at least one content from the first part of the at least one specific content being transmitted from the first network and the second part of the at least one specific content being transmitted from the second network. *See specification at, e.g., page 7, lines 14-19 (Independent Claim 37).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for receiving a request for at least a portion of recorded video. *See specification at, e.g., page 2, lines 13-15 (Dependent Claim 38).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for receiving a request for at least a portion of recorded audio. *See specification at, e.g., page 2, lines 16-18 (Dependent Claim 39).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for receiving a request for at least a portion of recorded audio and video. *See specification at, e.g., page 2, lines 19-21 (Dependent Claim 40).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for receiving a request for at least a portion of at least one of computer processable and network processable data. *See specification at, e.g., page 2, lines 22-24 (Dependent Claim 41).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with one or more times of one or more first network transmitted data portions. *See specification at, e.g., page 2, line 25 – page 3, line 3 (Dependent Claim 42).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions. *See specification at, e.g., page 3, lines 4-7 (Dependent Claim 43).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller. *See specification at, e.g., page 3, lines 8-12 (Dependent Claim 44).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for accepting input of

the first-network schedule published by at least one of the first-network source controller and the first-network source switch controller. *See specification at, e.g., page 3, lines 13-17 (Dependent Claim 45).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for consulting a first-network schedule received from at least one of a first-network source controller and a first-network source switch controller. *See specification at, e.g., page 3, lines 18-22 (Dependent Claim 46).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for receiving the first-network schedule from a data stream. *See specification at, e.g., page 3, lines 23-26 (Dependent Claim 47).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one absolute time associated with a clock. *See specification at, e.g., page 4, lines 1-3 (Dependent Claim 48).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one absolute time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to some specified received data. *See specification at, e.g., page 4, lines 4-8 (Dependent Claim 49).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the

specific content with at least one absolute time associated with a transmitted clock.

*See specification at, e.g., page 4, lines 9-11 (Dependent Claim 50).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one relative time. *See specification at, e.g., page 4, lines 12-14 (Dependent Claim 51).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one time relative to a received marker. *See specification at, e.g., page 4, lines 15-17 (Dependent Claim 52).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one time of a first and a second received marker. *See specification at, e.g., page 4, lines 18-20 (Dependent Claim 53).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with one or more times of one or more second network transmitted data portions. *See specification at, e.g., page 4, lines 21-25 (Dependent Claim 54).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions. *See specification at, e.g., page 4, line 26 – page 5, line 2 (Dependent Claim 55).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for consulting a

second-network schedule published by at least one of a second-network source controller and a second-network source switch controller. *See specification at, e.g., page 5, lines 3-7 (Dependent Claim 56).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for accepting input of the second-network schedule published by at least one of the second-network source controller and the second-network source switch controller. *See specification at, e.g., page 5, lines 8-12 (Dependent Claim 57).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch controller. *See specification at, e.g., page 5, lines 13-17 (Dependent Claim 58).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for receiving the second-network schedule from a data stream. *See specification at, e.g., page 5, lines 18-21 (Dependent Claim 59).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one absolute time associated with a clock. *See specification at, e.g., page 5, lines 22-24 (Dependent Claim 60).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to

some specified received data. *See specification at, e.g., page 5, line 25 – page 6, line 2 (Dependent Claim 61).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one absolute time associated with a transmitted clock. *See specification at, e.g., page 6, lines 3-5 (Dependent Claim 62).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one relative time. *See specification at, e.g., page 6, lines 6-8 (Dependent Claim 63).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one time relative to a received marker. *See specification at, e.g., page 6, lines 9-11 (Dependent Claim 64).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for associating the specific content with at least one time of a first and a second received marker. *See specification at, e.g., page 6, lines 12-14 (Dependent Claim 65).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for agglomerating a portion of the at least one content received from the first network with a portion of the at least one content received from the second network. *See specification at, e.g., page 6, lines 15-18 (Dependent Claim 66).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for interleaving a

portion of the at least one content received from the first network with a portion of the at least one content received from the second network. *See specification at, e.g., page 6, lines 19-22 (Dependent Claim 67).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for selecting data from at least one data stream having file-address -to-temporal- address translated data. *See specification at, e.g., page 6, lines 23 –25 (Dependent Claim 68).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for selecting data from at least one data stream having disk-address -to-temporal- address translated data. *See specification at, e.g., page 7, lines 1-3 (Dependent Claim 69).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for selecting data from at least one data stream having tape-address -to-temporal- address translated data. *See specification at, e.g., page 7, lines 4-6 (Dependent Claim 70).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for selecting data from at least one data stream having substantially static memory-address-to-temporal-address translated data. *See specification at, e.g., page 7, lines 7-10 (Dependent Claim 71).*

In one instance of the system, the means for receiving a request for data having at least one specific content includes, but is not limited to, means for selecting data from at least one data stream having object-address -to-temporal- address translated data. *See specification at, e.g., page 7, lines 11-13 (Dependent Claim 72).*

### C. Summary of Independent Claim 73 and its Dependent Claims 74-80

Support for these claims appears throughout Appellant's application.

In one instance, a system includes, but is not limited to, a temporal address unit configured to receive a request for a substance of data; and a data switch controller configured to: generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance; apply the one or more first-network temporal addresses to receive a first part of the at least one specific content from a first network and applying the one or more second-network temporal addresses to receive a second part of the at least one specific content from a second network; and construct the at least one content from the first part of the at least one specific content from the first network and the second part of the at least one specific content from the second network. *See specification at, e.g., page 2, lines 5-11 (Independent Claim 73).*

In one instance of the system, the temporal address unit configured to receive a request for a substance of data includes, but is not limited to, a spatial-to-temporal address converter configured to receive a request for data in a spatial format. *See specification at, e.g., page 7, lines 26-28 (Independent Claim 74).*

In one instance of the system, the spatial-to-temporal address converter configured to receive a request for data in a spatial format includes, but is not limited to, a spatial-to-temporal address converter configured to receive a request for data in a spatial address device format. *See specification at, e.g., page 8, lines 1-4 (Independent Claim 75).*

In one instance of the system, the temporal address unit configured to receive a request for a substance of data includes, but is not limited to, a content-to-temporal

address converter configured to receive a request for data in a content format. *See specification at, e.g., page 8, lines 6-8 (Independent Claim 76).*

In one instance of the system, the content-to-temporal address converter configured to receive a request for data in a content format includes, but is not limited to, a content-to-temporal address converter configured to receive a request for at least a part of recorded video. *See specification at, e.g., page 8, lines 10-13 (Independent Claim 77).*

In one instance of the system, the content-to-temporal address converter configured to receive a request for data in a content format includes, but is not limited to, a content-to-temporal address converter configured to receive a request for at least a part of recorded audio. *See specification at, e.g., page 8, lines 15-18 (Independent Claim 78).*

In one instance of the system, the content-to-temporal address converter configured to receive a request for data in a content format includes, but is not limited to, a content-to-temporal address converter configured to receive a request for at least a part of recorded audio and video. *See specification at, e.g., page 8, lines 20-23 (Independent Claim 79).*

In one instance of the system, the data switch controller configured to generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance includes, but is not limited to, said data switch controller configured to access a first-network content transmission schedule and a second-network content transmission schedule. *See specification at, e.g., page 8, lines 25-29 (Independent Claim 80).*

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The issues in this response relate to whether the Examiner has met his burden of establishing a *prima facie* case sufficient to establish that Appellant's Claims 1-80 are unpatentable. Specifically, the issues are as follows:

1. Whether the Examiner has met his burden to show Claims 1-80 are anticipated by Jaeger.

## **VII. ARGUMENT: ART OF RECORD DOES NOT ESTABLISH *PRIMA FACIE* CASE OF UNPATENTABILITY IN VIEW OF CITED ART OF RECORD**

Appellant respectfully asserts herein that, under the MPEP and legal standards for patentability as set forth below, the art of record does not establish a *prima facie* case of the unpatentability of Appellant's claims at issue. Specifically, Appellant respectfully shows below that the art of record does not recite the text of Appellant's claims at issue, and hence fails to establish a *prima facie* case of unpatentability. Accordingly, Appellant respectfully requests that the Examiner withdraw the rejections and hold all claims to be allowable over the art of record.

### **A. MPEP Standards for Patentability<sup>3</sup>**

The MPEP states as follows: "the examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability. If that burden is met, the burden of coming forward with evidence or argument shifts to the Applicant. . . If examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of the patent." MPEP § 2107 (citing *In re Oetiker*, 977 F.2d 1443,

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<sup>3</sup> Appellant is aware that Examiner is familiar with the MPEP standards. Appellant is merely setting forth the MPEP standards to serve as a framework for Appellant's arguments following and to ensure a complete written record is established. Should Examiner disagree with Appellant's characterization of the MPEP standards, Appellant respectfully requests correction.

1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)); *In Re Glaug*, 283 F.3d 1335, 62 USPQ2d 1151 (Fed. Cir. 2002) (“During patent examination the PTO bears the initial burden of presenting a *prima facie* case of unpatentability. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). If the PTO fails to meet this burden, then the Applicant is entitled to the patent.”). Accordingly, unless and until an examiner presents evidence establishing *prima facie* unpatentability, an Appellant is entitled to a patent on all claims presented for examination.

#### **1. MPEP Standards for Determining Anticipation**

An examiner bears the initial burden of factually supporting any *prima facie* conclusion of anticipation. *Ex Parte Skinner*, 2 U.S.P.Q.2d 1788, 1788-89 (B.P.A.I. 1986); *In Re King*, 801 F.2d 1324, 231 U.S.P.Q. (BNA) 136 (Fed. Cir. 1986); MPEP § 2107 (citing *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992) (“[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability....”)). Failure of an examiner to meet this burden entitles an Applicant to a patent. *Id.* (“[i]f examination at the initial stage does not produce a *prima facie* case of unpatentability, then without more the Applicant is entitled to grant of the patent”).

The MPEP indicates that in order for an examiner to establish a *prima facie* case of anticipation of an Applicant’s claim, the examiner must first interpret the claim,<sup>4</sup> and thereafter show that the cited prior art discloses the same elements, in the same arrangement, as the elements of the claim which the examiner asserts is anticipated. More specifically, the MPEP states that “[a] claim is anticipated *only if each and every element as set forth in the claim is found*, either expressly or inherently described, in a single prior art reference. . . . The identical invention must be shown in as complete detail as is contained in the . . . claim. . . . The elements

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<sup>4</sup> With respect to interpreting a claim at issue, the MPEP directs that, during examination -- as opposed to subsequent to issue -- such claim be interpreted as broadly as the claim terms would reasonably allow, in light of the specification, when read by one skilled in the art with which the claimed invention is most closely connected. MPEP § 2111.

must be arranged as required by the claim . . . ". *MPEP* § 2131 (emphasis added). Consequently, under the guidelines of the MPEP set forth above, if there is *any* substantial difference between the prior art cited by an examiner and an Applicant's claim which the examiner asserts is rendered anticipated by the prior art, the prior art does NOT establish a *prima facie* case of anticipation and, barring other rejections, the Applicant is entitled to a patent on such claim.

## 2. MPEP Standards for Determining Obviousness

"[T]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness."<sup>5</sup> *MPEP* § 2142. The MPEP indicates that in order for an examiner to establish a *prima facie* case that an invention, as defined by a claim at issue, is obvious, the examiner must (1) interpret the claim at issue; (2) define one or more prior art reference components relevant to the claim at issue; (3) ascertain the differences between the one or more prior art reference components and the elements of the claim at issue; and (4) adduce objective evidence which establishes, under a preponderance of the evidence standard, a teaching to modify the teachings of the prior art reference components such that the prior art reference components can be used to construct a device substantially equivalent to the claim at issue. This last step generally encompasses two sub-steps: (1) adducement of objective evidence teaching how to modify the prior art components to achieve the individual elements of the claim at issue; and (2) adducement of objective evidence teaching how to combine the modified individual components such that the claim at issue, as a whole, is achieved. *MPEP* § 2141; *MPEP* § 2143. Each of these forgoing elements is further defined within the MPEP. *Id.*

This requirement has been explained recently by the Supreme Court in *KSR v. Teleflex*, 550 U.S. \_\_\_\_; 127 S. Ct. 1727 (2007) which noted that such a rejection

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<sup>5</sup> An invention, as embodied in the claims, is rendered obvious if an examiner concludes that although the claimed invention is not identically disclosed or described in a reference, the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. *MPEP* § 2141 (citing 35 U.S.C. § 103).

requires "some articulated reasoning ... to support the legal conclusion of obviousness." As stated by the Court, obviousness can be established where "there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, *this analysis should be made explicit.*" (*emphasis added*) See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ('[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.')." *KSR v. Teleflex*, 550 U.S. \_\_\_\_; 127 S. Ct. 1727 at 1741.

As further described by the Court "*[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art.* Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. This is so because inventions in most, if not all, instances rely upon building blocks long since uncovered, and claimed discoveries almost of necessity will be combinations of what, in some sense, is already known." *KSR v. Teleflex*, 550 U.S. \_\_\_\_; 127 S. Ct. 1727 at 1741.

#### a) Interpreting a Claim at Issue

With respect to interpreting a claim at issue, the MPEP directs that, during examination -- as opposed to subsequent to issue -- such claim be interpreted as broadly as the claim terms would reasonably allow when read by one skilled in the art with which the claimed invention is most closely connected. In practice, this is achieved by giving each of the terms in the claim the "plain meaning" of the terms as such would be understood by those having ordinary skill in the art, and if portions of the claim have no "plain meaning" within the art, or are ambiguous as used in a claim, then the examiner is to consult the specification for clarification. *MPEP* § 2111.

**b) Definition of One or More Prior Art Reference Components Relevant to the Claim at Issue**

Once the claim at issue has been properly interpreted, the next step is the definition of one or more prior art reference components (e.g., electrical, mechanical, or other components set forth in a prior art reference) relevant to the properly interpreted claim at issue. With respect to the definition of one or more prior art reference components relevant to the claim at issue, the MPEP defines three proper sources of such prior art reference components, with the further requirement that each such source must have been extant at the time of invention to be considered relevant. These three sources are as follows: patents as defined by 35 U.S.C. § 102, printed publications as defined by 35 U.S.C. § 102, and information (e.g., scientific principles) deemed to be "well known in the art"<sup>6</sup> as defined under 35 U.S.C. § 102. *MPEP* § 2141; *MPEP* § 2144.

**c) Ascertainment of Differences between Prior Art Reference Components and Claim at Issue; Teaching to Modify and/or Combine Prior Art Reference Components to Remedy Those Differences in Order to Achieve Recitations of Claim at Issue**

With one or more prior art components so defined and drawn from the proper prior art sources, the differences between the one or more prior art reference components and the elements of the claim at issue are to be ascertained. Thereafter, in order to establish a case of *prima facie* obviousness, an examiner must set forth a

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<sup>6</sup> The fact that information deemed to be "well known in the art" can serve as a proper source of prior art reference components seems to open the door to subjectivity, but such is not the case. As a remedy to this potential problem, *MPEP* § 2144.03 states that if an examiner asserts that his position is derived from and/or is supported by a teaching or suggestion that is alleged to have been "well known in the art," and that if an Appellant traverses such an assertion (that something was "well known within the art"), the examiner must cite a reference in support of his or her position. The same MPEP section also states that when a rejection is based on facts within the personal knowledge of an examiner, the data should be stated as specifically as possible, and the facts must be supported, when called for by the Appellant, by an affidavit from the examiner. Such an affidavit is subject to contradiction or explanation by the affidavits of the Appellant and other persons. *Id.* Thus, all sources of prior art reference components must be objectively verifiable.

rationale, supported by objective evidence<sup>7</sup> sufficient to demonstrate under a preponderance of the evidence standard, that in the prior art extant at the time of invention there was a teaching to modify and/or combine the one or more prior art reference components to construct a device practicably equivalent to the claim at issue.

The preferable evidence relied upon is an express teaching to modify/combine within the properly defined objectively verifiable sources of prior art. In the absence of such express teaching, an examiner may attempt to establish a rationale to support a finding of such teaching reasoned from, or based upon, express teachings taken from the defined proper sources of such evidence (*i.e.*, properly defined objectively verifiable sources of prior art). *MPEP* § 2144; *In re Dembiczak*, 50 U.S.P.Q.2d 1614 (Fed. Cir. 1999).

The MPEP recognizes the pitfalls associated with the tendency to subconsciously use impermissible "hindsight" when an examiner attempts to establish such a rationale. The MPEP has set forth at least two rules to ensure against the likelihood of such impermissible use of hindsight. The first rule is that:

under 35 U.S.C. 103, the examiner must step backward in time and into the shoes worn by the hypothetical "person of ordinary skill in the art" when the invention was unknown and just before it was made. In view of all factual information,<sup>8</sup> the examiner must then make a determination whether the claimed invention "as a whole" would have been obvious at that time to that person. Knowledge of an Applicant's disclosure must be put aside in reaching this determination, yet kept in mind in order to determine the "differences," conduct the search, and evaluate the "subject matter as a whole" of the invention. The tendency to resort to "hindsight" based upon an Applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art.

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<sup>7</sup> The proper sources of the objective evidence supporting the rationale are the defined proper sources of prior art reference components, discussed above, with the addition of factually similar legal precedent. *MPEP* § 2144.

<sup>8</sup> "Factual information" is information actually existing or occurring, as distinguished from mere supposition or opinion. *Black's Law Dictionary* 532 (5th ed. 1979).

MPEP § 2142 (emphasis added). Thus, if the only objective evidence of such teaching to modify and/or combine prior art reference components is an Applicant's disclosure, no evidence of such teaching exists.<sup>9</sup>

The second rule is that if an examiner attempts to rely on some advantage or expected beneficial result that would have been produced by a modification and/or combination of the prior art reference components as evidence to support a rationale to establish such teachings to modify and/or combine prior art reference components, the MPEP requires that such advantage or expected beneficial result be objectively verifiable teachings present in the acceptable sources of prior art (or drawn from a convincing line of reasoning based on objectively verifiable established scientific principles or teachings). MPEP § 2144. Thus, as a guide to avoid the use of impermissible hindsight, these rules from the MPEP make clear that absent some objective evidence, sufficient to persuade under a preponderance of the evidence standard, no teaching of such modification and/or combination exists.<sup>10</sup>

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<sup>9</sup> An Appellant may argue that an examiner's conclusion of obviousness is based on improper hindsight reasoning. However, "[a]ny judgment on obviousness is in a sense necessarily a reconstruction based on hindsight reasoning, but so long as it takes into account only knowledge which was within the level of ordinary skill in the art at the time the claimed invention was made and does not include knowledge gleaned only from Appellant's disclosure, such a reconstruction is proper." MPEP § 2145(X)(A) (emphasis added).

<sup>10</sup> *In Re Sang Su Lee* 277 F.3d 1338 (Fed. Cir. 2002) ("When patentability turns on the question of obviousness, the search for and analysis of the prior art includes evidence relevant to the finding of whether there is a teaching, motivation, or suggestion to select and combine the references relied on as evidence of obviousness.") *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 U.S.P.Q.2d 1001, 1008 (Fed. Cir. 2001) ("the central question is whether there is reason to combine [the] references," a question of fact drawing on the *Graham* factors). *The factual inquiry whether to combine references must be thorough and searching.* *Id.* *It must be based on objective evidence of record. This precedent has been reinforced in myriad decisions, and cannot be dispensed with.* *See, e.g., Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000) ("a showing of a suggestion, teaching, or motivation to combine the prior art references is an 'essential component of an obviousness holding'") (quoting *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 U.S.P.Q.2d 1225, 1232 (Fed. Cir. 1998)); *In re Dembicak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999) ("Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references."); *In re Dance*, 160 F.3d 1339, 1343, 48 U.S.P.Q.2d 1635, 1637 (Fed. Cir. 1998) (here must be some motivation, suggestion, or teaching of the desirability of making the specific combination that was made by the Appellant); *In re Fine*, 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988) ("teachings of references can be combined only if there is some suggestion or incentive to do so.")" (emphasis in original) (quoting *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984)). The need for specificity pervades this authority. *See, e.g., In re Kotzab*, 217 F.3d 1365, 1371, 55 U.S.P.Q.2d 1313, 1317 (Fed. Cir. 2000) ("particular findings must be made as to the reason the skilled

**B. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Show or Suggest the Text of Independent Claim 1 as Presented Herein; Notice of Allowance of Same Respectfully Requested**

**1. Independent Claim 1**

Independent Claim 1, as amended, recites:

A method comprising:

receiving a request for data having at least one specific content;

obtaining one or more first-network temporal addresses corresponding to the at least one specific content in response to the request for data having the at least one specific content;

obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and

constructing the at least one content from the first part and the second part.

As shown following, the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 1. Accordingly, Appellant respectfully requests that Examiner allow Independent Claim 1, as described more fully below.

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artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed"); *In re Rouffet*, 149 F.3d 1350, 1359, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) ("even when the level of skill in the art is high, the Board must identify specifically the principle, known to one of ordinary skill, that suggests the claimed combination. In other words, the Board must explain the reasons one of ordinary skill in the art would have been motivated to select the references and to combine them to render the claimed invention obvious.")).

a) **Technical Material Cited by Examiner Does Not Show or Suggest the Text of at Least Independent Claim 1.**

As set forth above, Independent Claim 1 recites as follows:

1. A method comprising:
  - [a] receiving *a request* for data having at least *one specific content*;
  - [b] obtaining one or more first-network *temporal addresses* corresponding to the at least one specific content in response to the request for data having the at least one specific content;
  - [c] obtaining one or more second-network *temporal addresses* corresponding to the at least one specific content, in response to the request for data having the at least one specific content;
  - [d] applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and
  - [e] constructing the at least *one content* from the first part and the second part.<sup>11</sup> (Emphases added.)

With respect to claim 1, Examiner has stated,

“As per claim 1, Jaeger teaches a method comprising: receiving a request for data having at least one specific content (see fig 1, col. 5 lines 49-52; reading track from a disk requires a request or commands); obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content (fig 1; col. 5 lines 52-67; temporal addresses/time stamps); obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content (col. 4 lines 3-13; col. 8 lines 35-45; col. 9 lines 35-54); and constructing the at least one content from the first network and the second network (col. 4 lines 3-13); col. 8

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<sup>11</sup> The lettering of the clauses herein is merely for sake of clarity of argument and should not be taken to imply any particular ordering of the clauses.

lines 35-45; col. 9 lines 35-54; Jaeger appears to teach first and second network see col. 8 lines 35-45). Furthermore, different disk can be located or part of different network (col. 5 lines 45-67).” *See Office Action*, p. 4 (April 7, 2008).

**(I) Examiner Citations to Jaeger With Regard to Clause [a] of Independent Claim 1:**

Appellant respectfully points out that Appellant has reviewed the portions of Jaeger identified by Examiner, and so far as Appellant can discern, Jaeger does not recite the text of clause [a] of Appellant’s Independent Claim 1. Rather, the portions of Jaeger cited by Examiner with respect to Claim 1 recite as follows:

First, incremental temporal segments of each recorded audio track are read from the disk 11 in a predetermined numerical order, e.g., starting with track 1 and ending with the last recorded track (e.g., track N).

...

Fig. 1 is a schematic representation of the process of the invention for re-organizing a large plurality of audio/video/data tracks or signals on a disk drive for playback.

*See Jaeger (US 6,345,028, 5:49-52; 4:55-57; Fig. 1).*

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do *not recite* the text of clause [a] as recited in Independent Claim 1. For example, Jaeger discloses “incremental temporal segments of each recorded audio track are read from the disk.” On the other hand, clause [a] recites “*receiving a request for at least one specific content;*” (emphasis added). Neither the cited Figure nor text show or recite “receiving a request” or “a request for at least one specific content”. The Examiner asserts that “*It should be noted that it is inherently required there be some kind of ‘request’ in order to read tracks from a disk,*” however, the Examiner provides no evidence to support this requirement or its inherency.

Appellant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [a] of Claim 1. Appellant further respectfully points out that

the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [a] of Independent Claim 1 as the Examiner alleges.

Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that Jaeger describes or teaches the text of clause [a] of Independent Claim 1. Under the guidelines from the MPEP and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 1 for at least these reasons.

Given that Appellant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 1. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Appellant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a prima facie case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Appellant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that

the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Appellant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(2) Examiner Citations to Jaeger With Regard to Clause [b] of Independent Claim 1:**

Furthermore, Appellant respectfully points out that Appellant has reviewed the portions of Jaeger identified by Examiner, and so far as Appellant can discern, Jaeger also does not recite the text of clause [b] of Appellant's Independent Claim 1, which recites, "obtaining one or more first-network *temporal addresses* corresponding to the at least one specific content, in response to the request for data having the at least one specific content" (emphasis added). The Examiner cites Fig. 1; and cites col. 5, lines 52-67 of Jaeger in the rejection, which states:

"The temporal segments are all of the same short duration, such as 100 ms, although other durations may be used. In the example of FIG. 1, the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1. Frame 1 is labeled with a time stamp which indicates the starting point of the frame and also the number of the frame. Likewise, the second 100 ms segments of tracks 1-N are then read from the disk drive 11 and placed in the RAM buffer as data frame 2, which is also labeled with its respective time stamp. This process is reiterated until the entire lengths of all of the audio tracks or signals are re-ordered into the

composite data frame mode. Reiteration may be carried out R times, where R may vary from zero to any positive integer.” (See *Jaeger* 5: 52-67.)

As can be seen from the foregoing, the Examiner-identified portions of *Jaeger* do not recite the text of clause [b] as recited in Independent Claim 1. For example, *Jaeger* states “temporal segments are all of the same short duration, such as 100 ms, … the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1.” On the other hand, the cited portion of *Jaeger* does not recite obtaining one or more *temporal addresses* corresponding to the at least one specific content, as recited in clause [b] of Claim 1.

Appellant has reviewed the Examiner-cited portions of *Jaeger* and is unable to locate a recitation of clause [b] of Claim 1. Appellant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [b] of Independent Claim 1 as the Examiner alleges.

Again, Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that *Jaeger* describes or teaches the text of clause [b] of Independent Claim 1. Under the guidelines from the *MPEP* and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 1 for at least these reasons.

Again, given that Appellant has shown, above, what *Jaeger* actually recites, the question thus naturally arises as to how Examiner saw *Jaeger* as “teaching” something related to Clause [b] of Independent Claim 1. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of *Jaeger* as set forth, it follows that Examiner is interpreting *Jaeger* through the lens of Appellant’s application, which is impermissible hindsight use.

Thus, at present, Examiner's assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Appellant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence, and 37 C.F.R. 1.104(d)(2).*

In view of the foregoing, and under the MPEP standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Appellant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(3) Examiner Citations to Jaeger With Regard to Clause [c] of Independent Claim 1:**

Furthermore, Appellant respectfully points out that Appellant has reviewed the portions of Jaeger identified by Examiner, and so far as Appellant can discern, Jaeger also does not recite the text of clause [c] of Appellant's Independent Claim 1, which recites, "obtaining one or more second-network *temporal addresses* corresponding to the at least one specific content, in response to the request for data having the at least

one specific content" (emphasis added). The Examiner cites col. 4, lines 3-13; col. 8, lines 35-45; and col. 9, lines 35-54 of Jaeger, which state:

"In a further embodiment, a plurality of signals (audio tracks, video tracks or data tracks) from any source are acquired from any source, such as, but not limited to, data disk, magnetic tape, any optical media, a computer bus or other data bus, internet data stream, live recording, or the like. As the signals are received, incremental temporal segments of each signal are assembled into composite data frames in a memory, and the composite data frames are recorded by any data recording system or onto any recording medium, such as any magnetic or optical medium, any tape medium or any memory."

The invention may be generalized as depicted in FIG. 5. A plurality of audio, video and/or data tracks/signals is acquired from any source, such as a recording system, data storage system, network resource, real-time sources, a computer bus or other data bus, internet data stream, live recording or the like. As stated previously, any reference to audio tracks, data tracks or video tracks is presumed to include any and all audio signals, data signals, or video signals, or any combination thereof, whether or not they are specifically configured as tracks, and any reference to one is intended to encompass all.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

(See Jaeger col. 4: lines 3-13; col. 8: lines 35-45; col. 9: lines 35-54)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do not recite the text of clause [c] as recited in Independent Claim 1. For example, Jaeger states "the invention also encompasses constructing composite data frames with variable

segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled.” On the other hand, the cited portions of Jaeger do not recite obtaining one or more *temporal addresses* corresponding to the time a specific content is being transmitted, as recited in clause [c] of Claim 1.

Appellant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [c] of Claim 1. Appellant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [c] of Independent Claim 1 as the Examiner alleges.

Again, Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that Jaeger describes or teaches the text of clause [c] of Independent Claim 1. Under the guidelines from the *MPEP* and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 1 for at least these reasons.

Given that Appellant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [c] of Independent Claim 1. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Appellant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the *MPEP* guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Appellant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

Thus, for these additional reasons, and under the MPEP standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, Appellant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**(4) Examiner Citations to Jaeger With Regard to Clause [e] of Independent Claim 1:**

Furthermore, Appellant respectfully points out that Appellant has reviewed the portions of Jaeger identified by Examiner, and so far as Appellant can discern, Jaeger also does not recite the text of clause [e] of Appellant's Independent Claim 1, which recites, "constructing the at least one content from the first part and the second part." The Examiner again cites col. 4, lines 3-13; col. 8, lines 35-45; and col. 9, lines 35-54 of Jaeger, which state:

"In a further embodiment, a plurality of signals (audio tracks, video tracks or data tracks) from any source are acquired from any source, such as, but not limited to, data disk, magnetic tape, any optical media, a computer bus or other data bus, internet data stream, live recording, or the like. As the signals are received, incremental temporal segments of each signal are

assembled into composite data frames in a memory, and the composite data frames are recorded by any data recording system or onto any recording medium, such as any magnetic or optical medium, any tape medium or any memory.”

The invention may be generalized as depicted in FIG. 5. A plurality of audio, video and/or data tracks/signals is acquired from any source, such as a recording system, data storage system, network resource, real-time sources, a computer bus or other data bus, internet data stream, live recording or the like. As stated previously, any reference to audio tracks, data tracks or video tracks is presumed to include any and all audio signals, data signals, or video signals, or any combination thereof, whether or not they are specifically configured as tracks, and any reference to one is intended to encompass all.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

(See Jaeger col. 4: lines 3-13; col. 8: lines 35-45; col. 9: lines 35-54)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do *not recite* the text of clause [e] as recited in Independent Claim 1. For example, Jaeger states “the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled.” On the other hand, the cited portion of Jaeger does not recite constructing the at least one content from a first part of the content and a second part of the content that are obtained by applying to a first network and a second network, at approximately the same

time, one or more *temporal addresses* corresponding to the time the specific content is being transmitted from the first and second networks, as recited in clause [e] of Claim 1.

Appellant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [e] of Claim 1. Appellant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [e] of Independent Claim 1 as the Examiner alleges.

Again, Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that Jaeger describes or teaches the text of clause [e] of Independent Claim 1. Under the guidelines from the *MPEP* and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 1 for at least these reasons.

Given that Appellant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [e] of Independent Claim 1. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Appellant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the *MPEP* guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 1 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner

“teaches,” Appellant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 1. Accordingly, for at least the foregoing reasons, Appellant respectfully asks Examiner to hold amended Independent Claim 1 allowable and to issue a Notice of Allowance of same.

**2. Dependent Claims 2-36 Patentable for at Least Reasons of Dependency from Independent Claim 1.**

Claims 2-36 depend either directly or indirectly from Independent Claim 1. “A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers.” *See 35 U.S.C. § 112 paragraph 4.* Consequently, Dependent Claims 2-36 are patentable for at least the reasons why Independent Claim 1 is patentable. Accordingly, Appellant respectfully requests that Examiner hold Dependent Claims 2-36 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

**C. Technical Material Cited by Examiner (Jaeger (US 6,345,028)) Does Not Show or Suggest the Text of Independent Claim 37 as Presented Herein; Notice of Allowance of Same Respectfully Requested**

1. Independent Claim 37

Independent Claim 37, as amended, recites:

A system comprising:

means for receiving a request for data having at least one specific content;

means for obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

means for obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

[a] means for applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and

means for constructing the at least one content from the first part and the second part.

As described below, Appellant respectfully submits that the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 37. Accordingly, Appellant respectfully requests that Examiner allow Independent Claim 37.

**a) Technical Material Cited by Examiner Does Not Show or Suggest the Text of at Least Independent Claim 37.**

With respect to claim 37, Examiner has stated,

“Claims 37-72 is a system claim of the method claims 1-36 discussed above. They are rejected under the same rationale.” *See Office Action*, p. 7 (April 7, 2008).

As can be seen from the foregoing, discussed above with respect to claim 1, the Examiner-identified portions of Jaeger do not recite the text of Independent Claim 37. More specifically, Appellant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of the elements of Claim 37. For example, Jaeger discloses “incremental temporal segments of each recorded audio track are read from the disk.” On the other hand, the cited portion of Jaeger does not recite “means for applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network,” as recited in clause [a] of Claim 37.

Appellant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach Independent Claim 37 as the Examiner alleges. Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that Jaeger describes or teaches the text of clause [a] of Independent Claim 37. Under the guidelines from the MPEP and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 37 for at least these reasons.

Given that Appellant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 37. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this

and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Appellant's application, which is impermissible hindsight use. Thus, at present, Examiner's assertions regarding Jaeger are untenable. Under the MPEP guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 37 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Appellant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Notices or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 37. Accordingly, for at least the foregoing reasons, Appellant respectfully asks Examiner to hold amended Independent Claim 37 allowable and to issue a Notice of Allowance of same.

**2. Dependent Claims 38-72 are Patentable for at Least Reasons of Dependency from Independent Claim 37.**

Claims 38-72 depend either directly or indirectly from Independent Claim 37. "A claim in dependent form shall be construed to incorporate by reference all

the limitations of the claim to which it refers." *See* 35 U.S.C. § 112 paragraph 4. Consequently, Dependent Claims 38-72 are patentable for at least the reasons why Independent Claim 37 is patentable. Accordingly, Appellant respectfully requests that Examiner hold Dependent Claims 38-72 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

**D. Technical Material Cited by Examiner (US 6,345,028) Does Not Recite the Text of Independent Claim 73 as Presented Herein; Notice of Allowance of Same Respectfully Requested**

**1. Independent Claim 73**

Independent Claim 73, as amended, recites:

A system comprising:

[a] a temporal address unit configured to receive a request for a substance of data; and

[b] a data switch controller configured to:

generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance;

apply the one or more first-network temporal addresses to receive a first part of the at least one specific content from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content from a second network; and

construct the at least one content from the first part and the second part.

As described below, Appellant respectfully submits that the technical material cited by Examiner does not show or suggest at least part of the text of Independent Claim 73. Accordingly, Appellant respectfully requests that Examiner allow Independent Claim 73.

**a) Technical Material Cited by Examiner Does Not Recite the Text of at Least Independent Claim 73.**

With respect to claim 73, the Examiner has stated,

“As per claim 73, Jaeger teaches a system comprising: a temporal address unit configured to receive a request for a substance of data (fig. 1, 5 and 6; col. 7, lines 39-52; and col. 9, line 35 to col. 10, line 23); and a data switch controller configured to generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance (col. 4, lines 3-13; col. 8, lines 35-45; col. 9, lines 35-54; Jaeger appears to teach first and second network, see col. 8 lines 35-45). Furthermore, different disk can be located or part on part of different network, col. 5, lines 45-67)” *See Office Action*, p. 7 (April 7, 2008).

**(1) Examiner Citations to Jaeger With Regard to Clause [a] of Independent Claim 73:**

Appellant respectfully points out that Appellant has reviewed the portions of Jaeger identified by Examiner, and so far as Appellant can discern, Jaeger does not recite the text of clause [a] of Appellant's Independent Claim 73. Rather, the portions of Jaeger cited by Examiner with respect to Claim 73 recite as follows:

Fig. 1 is a schematic representation of the process of the invention for re-organizing a large plurality of audio/video/data tracks or signals on a disk drive for playback.

Fig. 5 is a schematic representation of another embodiment of the invention in which audio or data tracks or signals from any source, whether pre-recorded or not, are reorganized into composite data farms and recorded for future playback.

Fig. 6A-6C are schematic representations of further embodiments of composite data frames constructed in accordance with the present invention.

An alternative embodiment of the invention involves the steps of recording the original audio tracks on a disk drive 11, and reading out temporal incremental segments of each audio track in a predetermined

order into a memory buffer, as described previously. As before, the temporal segments are all of the same duration, e.g., 100 ms. With regard to FIG. 3, each temporal segment may be further divided into equal sub-segments, and these segments may be assembled as a sub-section of a composite data frame. Each sub-segment comprises an incremental time slice of one audio/video/data track or signal, and each sub-section of the composite data frame comprises all of the incremental time slices for a given time period of all the tracks/signals, assembled in a predetermined order.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

Likewise, with regard to FIG. 6B, composite data frames may be constructed in which the temporal segments of the data frame are arrayed in non-serial order that may be fixed or re-arranged in each data frame. The re-ordering of the temporal segment order in subsequent composite data frames may be carried out in accordance with a predetermined function, whereby the composite data frames may be read out and played back only by devices that are equipped to carry out the predetermined function. This capability may comprise a data encryption technique that enables protected recording and playback of audio, video, and data signals and may be used to dissuade unauthorized copying of protected recordings.

As shown in FIG. 6C, the temporal segments of the respective signal track may contain data sampled at differing rates, based on the data rate of the signal track from which the segment was drawn. The data rate of each temporal segment is represented by the amount of hatching of the respective segment. For example, the composite data frame may contain temporal segments from audio tracks (at various data rates), video tracks (at higher data rates) and data tracks (at various data rates).

The techniques for forming composite data frames illustrated in FIGS. 6A-6C may be used singly or in combination. For example, differing lengths of temporal segments may be placed in variable serial order that varies with each subsequent composite data frame. Or, temporal segments containing signals of varying sample rates may be placed in variable serial order that varies with each subsequent composite data frame. Other combinatorial strategies may be apparent to those skilled in the art. Likewise, variable bit structure among the signals being recorded and played back may be accommodated.

Also, it is noted that the recording and playback techniques disclosed herein work equally well on compressed or non-compressed data, in any of the formats illustrated in FIGS. 6A-6C.

*See Jaeger* (US 6,345,028, (Figs. 1, 5 and 6; col. 7, lines 39-52; col. 9, line 35 to col. 10, line 23).

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do *not recite* the text of clause [a] as recited in Independent Claim 73. For example, Jaeger discloses “reading out temporal incremental segments of each audio track in a predetermined order into a memory buffer.” On the other hand, clause [a] recites “a *temporal address* unit configured to receive a request for a substance of data;” (emphasis added). Neither the cited Figures nor text show or recite “a *temporal address* unit” as recited in Claim 73.

Appellant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [a] of Claim 73. Appellant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [a] of Independent Claim 73 as the Examiner alleges.

Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that Jaeger describes or teaches the text of clause [a] of Independent Claim 73. Under the guidelines

from the *MPEP* and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 73 for at least these reasons.

Given that Appellant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 73. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Appellant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the *MPEP* guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 73 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in support of Examiner assertions regarding what the technical material cited by Examiner “teaches,” Appellant infers that the Examiner is relying on “personal knowledge” and/or is taking “official notice” of one or more factors to reach the factual conclusion of what the cited technical material “teaches.” In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner’s currently unsupported assertions regarding what the cited technical material “teaches” and/or should be interpreted to “teach.” *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence, and 37 C.F.R. 1.104(d)(2).*

In view of the foregoing, and under the *MPEP* standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 73.

Accordingly, for at least the foregoing reasons, Appellant respectfully asks Examiner to hold amended Independent Claim 73 allowable and to issue a Notice of Allowance of same.

**(2) Examiner Citations to Jaeger With Regard to Clause [b] of Independent Claim 73:**

Furthermore, Appellant respectfully points out that Appellant has reviewed the portions of Jaeger identified by Examiner, and so far as Appellant can discern, Jaeger also does not recite the text of clause [b] of Appellant's Independent Claim 73, which recites, "a data switch controller configured to: generate one or more first-network *temporal addresses* and second-network *temporal addresses* in response to the request for the substance; apply the one or more first-network temporal addresses to receive a first part of the at least one specific content from a first network while approximately at the same time applying the one or more second-network temporal addresses to receive a second part of the at least one specific content from a second network; and construct the at least one content from the first part and the second part" (emphasis added).

The Examiner cites col. 4, lines 3-13; col. 8, lines 35-45; col. 9, lines 35-54; and col. 5, lines 45-67, which state:

"In a further embodiment, a plurality of signals (audio tracks, video tracks or data tracks) from any source are acquired from any source, such as, but not limited to, data disk, magnetic tape, any optical media, a computer bus or other data bus, internet data stream, live recording, or the like. As the signals are received, incremental temporal segments of each signal are assembled into composite data frames in a memory, and the composite data frames are recorded by any data recording system or onto any recording medium, such as any magnetic or optical medium, any tape medium or any memory."

The invention may be generalized as depicted in FIG. 5. A plurality of audio, video and/or data tracks/signals is acquired from any source, such as a recording system, data storage system, network resource, real-time sources, a computer bus or other data bus, internet data stream, live recording or the like. As stated previously, any reference to audio tracks, data tracks or video tracks is presumed to include any and all audio signals, data signals, or video signals, or any combination thereof, whether or not they are specifically configured as tracks, and any reference to one is intended to encompass all.

With regard to FIG. 6A, the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is sampled. Thus, for example, the first temporal segment of the composite data frame may comprise 100 ms of track 1, the second segment may comprise 50 ms of track 2, and the third segment may be 100 ms, and subsequent temporal segment length may vary in similar or dissimilar fashion. Subsequent composite data frames may have selectively varied temporal segment lengths, so that the average data rate for each track during playback is sufficient to permit simultaneous streaming outputs of all tracks. Alternatively, the subsequent data frames may maintain the differing temporal segment length shown in FIG. 6A, if, for example, the shorter segments of the data frame are transmitting signals that have been compressed and can be expanded to enable simultaneous streaming outputs with the other uncompressed tracks having longer frame segments.

To overcome this drawback in the playback process, the invention processes the recorded audio tracks by re-ordering the audio data and recording new composite data frames onto a disk drive. First, incremental temporal segments of each recorded audio track are read from the disk 11 in a predetermined numerical order, e.g., starting with track 1 and ending with the last recorded track (e.g., track N). The temporal segments are all of the same short duration, such as 100 ms, although other durations may be used. In the example of FIG. 1, the first 100 ms segments of tracks 1-N are read in a predetermined order from the disk 11 and placed in a RAM buffer in the predetermined order, where they are assembled into composite data frame 1. Frame 1 is labeled with a time stamp which indicates the starting point of the frame and also the number of the frame. Likewise, the second 100 ms segments of tracks 1-N are then read from the disk drive 11 and placed in the RAM buffer as data frame 2, which is also labeled with its respective time stamp. This process is reiterated until the entire lengths of all of the audio tracks or signals are re-ordered into the composite data frame mode. Reiteration may be carried out R times, where R may vary from zero to any positive integer.

(See Jaeger col. 4: lines 3-13; col. 8: lines 35-45; col. 9: lines 35-54; col. 5, lines 45-67)

As can be seen from the foregoing, the Examiner-identified portions of Jaeger do *not recite* the text of clause [b] as recited in Independent Claim 73. For example, Jaeger states “the invention also encompasses constructing composite data frames with variable segment lengths; i.e., temporal segments of a plurality of audio, video, and/or data signals, in which the temporal segments differ in length of time that each signal track is

sampled.” On the other hand, the cited portion of Jaeger does not recite obtaining one or more *temporal addresses* corresponding to the time a specific content is being transmitted as recited in clause [b] of Claim 73.

Appellant has reviewed the Examiner-cited portions of Jaeger and is unable to locate a recitation of clause [b] of Claim 73. Appellant further respectfully points out that the Examiner has provided no evidence or reason as to why the text of the reference passages should be interpreted to teach clause [b] of Independent Claim 73 as the Examiner alleges.

Again, Appellant respectfully notes: “[W]hat a reference teaches is a question of fact.” *Amazon.com, Inc. v. Barnesandnoble.com, Inc.*, 239 F.3d 1343, 1358 (Fed. Cir. 2001) (referencing *In re Beattie*, 974 F.2d 1309, 1311 (Fed.Cir.1992)). See also *McGinley v. Franklin Sports*, 262 F.3d 1339, 1350 (Fed. Cir. 2001). Appellant respectfully submits that there is no proffered evidence that would support a finding of fact that Jaeger describes or teaches the text of clause [b] of Independent Claim 73. Under the guidelines from the *MPEP* and from the case law established by the Court of Appeals for the Federal Circuit, as set forth above, the cited art of record fails to suggest Independent Claim 73 for at least these reasons.

Given that Appellant has shown, above, what Jaeger actually recites, the question thus naturally arises as to how Examiner saw Jaeger as “teaching” something related to Clause [a] of Independent Claim 73. Appellant respectfully points out that the Appellant’s Application is the only objectively verifiable examiner-cited document of record that shows or suggests what Examiner purports the reference to teach. From this and the express recitations of Jaeger as set forth, it follows that Examiner is interpreting Jaeger through the lens of Appellant’s application, which is impermissible hindsight use. Thus, at present, Examiner’s assertions regarding Jaeger are untenable. Under the *MPEP* guidelines as set forth above, the cited art of record fails to establish a *prima facie* case of unpatentability for at least these reasons. Accordingly, for at least the foregoing reasons, Appellant respectfully requests that Examiner hold Independent Claim 73 allowable and issue a Notice of Allowability of same.

In the alternative and/or in addition to the foregoing, as Examiner has provided no objectively verifiable evidence, nor argument based on objectively verifiable evidence, in

support of Examiner assertions regarding what the technical material cited by Examiner "teaches," Appellant infers that the Examiner is relying on "personal knowledge" and/or is taking "official notice" of one or more factors to reach the factual conclusion of what the cited technical material "teaches." In view of the foregoing, if Examiner desires to maintain the rejection, in the next communication, Appellant respectfully requests that the Examiner provide an affidavit or declaration setting forth objectively verifiable evidence in support of Examiner's currently unsupported assertions regarding what the cited technical material "teaches" and/or should be interpreted to "teach." *See, e.g., MPEP S 2144.03(C), If Appellant Challenges a Factual Assertion as Not Properly Officially Noticed or Not Properly Based Upon Common Knowledge, the Examiner Must Support the Finding with Adequate Evidence*, and 37 C.F.R. 1.104(d)(2).

In view of the foregoing, and under the MPEP standards as set forth above, Appellant respectfully submits that the Examiner-cited technical material does not establish a *prima facie* case of the unpatentability of Independent Claim 73. Accordingly, for at least the foregoing reasons, Appellant respectfully asks Examiner to hold amended Independent Claim 73 allowable and to issue a Notice of Allowance of same.

**2. Dependent Claims 74-80 are Patentable for at Least Reasons of Dependency from Independent Claim 73.**

Claims 74-80 depend either directly or indirectly from Independent Claim 73. "A claim in dependent form shall be construed to incorporate by reference all the limitations of the claim to which it refers." *See 35 U.S.C. § 112 paragraph 4.* Consequently, Dependent Claims 74-80 are patentable for at least the reasons why Independent Claim 73 is patentable. Accordingly, Appellant respectfully requests that Examiner hold Dependent Claims 74-80 patentable for at least the foregoing reasons, and issue a Notice of Allowance on same.

**VIII. EVIDENCE APPENDIX**

Appellant hereby indicates as follows: "none" or "not applicable."

## **IX. RELATED PROCEEDINGS APPENDIX**

Appellant hereby indicates as follows: “none” or “not applicable.”

## **X. CONCLUSION**

Appellant may have during the course of prosecution cancelled and/or amended one or more claims. Appellant notes that any such cancellations and/or amendments will have transpired (i) prior to issuance and (ii) in the context of the rules that govern claim interpretation during prosecution before the United States Patent and Trademark Office (USPTO). Appellant notes that the rules that govern claim interpretation during prosecution form a radically different context than the rules that govern claim interpretation subsequent to a patent issuing. Accordingly, Appellant respectfully submits that any cancellations and/or amendments during the course of prosecution should be held to be tangential to and/or unrelated to patentability in the event that such cancellations and/or amendments are viewed in a post-issuance context under post-issuance claim interpretation rules.

Insofar as that the Appellant may have during the course of prosecution cancelled/amended/argued claims sufficient to obtain a Notice of Allowability of all claims pending, Appellant may not have during the course of prosecution explicitly addressed all rejections and/or statements in Examiner's Office Actions. The fact that rejections and/or statements may not be explicitly addressed during the course of prosecution should NOT be taken as an admission of any sort, and Appellant hereby reserves any and all rights to contest such rejections and/or statements at a later time. Specifically, no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended (e.g., with respect to any facts of which Examiner took Official Notice, and/or for which Examiner has supplied no objective showing, Appellant hereby contests those facts and requests express documentary proof of such facts at such time at which such facts may become relevant). For example, although not expressly set forth during the course of prosecution, Appellant continues to assert all points of (e.g. caused by, resulting from, responsive to, etc.) any previous Office Action, and no waiver (legal, factual, or otherwise), implicit or explicit, is hereby intended. Specifically, insofar as that Appellant

does not consider the cancelled/unamended claims to be unpatentable, Appellant hereby gives notice that it may intend to file and/or has filed a continuing application in order prosecute such cancelled/unamended claims.

With respect to any cancelled claims, such cancelled claims were and continue to be a part of the original and/or present patent application(s). Appellant hereby reserves all rights to present any cancelled claim or claims for examination at a later time in this or another application. Appellant hereby gives public notice that any cancelled claims are still to be considered as present in all related patent application(s) (e.g. the original and/or present patent application) for all appropriate purposes (e.g., written description and/or enablement). Appellant does NOT intend to dedicate the subject matter of any cancelled claims to the public.

Appellant reserves the right to submit argument, rebuttal evidence, or legal authority in the instance the Board of Patent Appeals and Interferences finds that the Examiner has met his burden in establishing a *prima facie* case of unpatentability of the various appealed claims. Appellant further reserves the right to submit argument, rebuttal evidence, or legal authority if new claim interpretations or definitional citations are raised on appeal. The fact that argument, rebuttal evidence, or legal authority may not have been explicitly discussed during the course of prosecution should NOT be taken as an admission or waiver of any sort, and Appellant hereby reserves any and all rights to discuss (e.g. make explicit, produce, or explain) such rebuttal evidence at a later time.

The Examiner is invited to contact the undersigned at (360) 627-7147 to discuss the above and any other distinctions between the claims and the applied references. Also, if the Examiner notes any informalities in the claims, he is encouraged to contact the undersigned to expediently correct such informalities.

Respectfully submitted,

\_\_\_\_August 20<sup>th</sup>, 2009\_\_\_\_

\_\_\_\_/Dale C. Barr, Reg. No. 40,498/\_\_\_\_

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## **APPENDIX A. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL**

1. (Previously Presented) A method comprising:
  - receiving a request for data having at least one specific content;
  - obtaining one or more first-network temporal addresses corresponding to the at least one specific content in response to the request for data having the at least one specific content;
  - obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;
  - applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network and applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and
  - constructing the at least one content from the first part of the at least one specific content being transmitted from the first network and the second part of the at least one specific content being transmitted from the second network.
2. (Original) The method of Claim 1, wherein said receiving a request for data having at least one specific content further comprises:
  - receiving a request for at least a portion of recorded video.
3. (Original) The method of Claim 1, wherein said receiving a request for data having at least one specific content further comprises:
  - receiving a request for at least a portion of recorded audio.
4. (Original) The method of Claim 1, wherein said receiving a request for data having at least one specific content further comprises:
  - receiving a request for at least a portion of recorded audio and video.

5. (Original) The method of Claim 1, wherein the receiving a request for data having at least one specific content further comprises:

receiving a request for at least a portion of at least one of computer processable and network processable data.

6. (Original) The method of Claim 1, wherein said obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content further comprises:

associating the specific content with one or more times of one or more first network transmitted data portions.

7. (Original) The method of Claim 6, wherein said associating the specific content with one or more times of one or more first network transmitted data portions further comprises:

consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions.

8. (Original) The method of Claim 7, wherein said consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller.

9. (Original) The method of Claim 8, wherein said consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller further comprises:

accepting input of the first-network schedule published by at least one of the first-network source controller and the first-network source switch controller.

10. (Original) The method of Claim 7, wherein said consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

consulting a first-network schedule received from at least one of a first-network source controller and a first-network source switch controller.

11. (Original) The method of Claim 10, wherein said consulting a first-network schedule received from at least one of a first-network source controller and a first-network source switch controller further comprises:

receiving the first-network schedule from a data stream.

12. (Original) The method of Claim 6, wherein said associating the specific content with one or more times of one or more first network transmitted data portions further comprises:

associating the specific content with at least one absolute time associated with a clock.

13. (Original) The method of Claim 12, wherein said associating the specific content with at least one absolute time associated with a clock further comprises:

associating the specific content with at least one absolute time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to some specified received data.

14. (Original) The method of Claim 12, wherein said associating the specific content with at least one absolute time associated with a clock further comprises:

associating the specific content with at least one absolute time associated with a transmitted clock.

15. (Original) The method of Claim 6, wherein said associating the specific content with one or more times of one or more first network transmitted data portions further comprises:

associating the specific content with at least one relative time.

16. (Original) The method of Claim 15, wherein said associating the specific content with at least one relative time further comprises:

associating the specific content with at least one time relative to a received marker.

17. (Original) The method of Claim 15, wherein said associating the specific content with at least one relative time further comprises:

associating the specific content with at least one time of a first and a second received marker.

18. (Original) The method of Claim 1, wherein said obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content further comprises:

associating the specific content with one or more times of one or more second network transmitted data portions.

19. (Original) The method of Claim 18, wherein said associating the specific content with one or more times of one or more second network transmitted data portions further comprises:

consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions.

20. (Original) The method of Claim 19, wherein said consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

consulting a second-network schedule published by at least one of a second-network source controller and a second-network source switch controller.

21. (Original) The method of Claim 20, wherein said consulting a second-network schedule published by at least one of a second-network source controller and a second-network source switch controller further comprises:

accepting input of the second-network schedule published by at least one of the second-network source controller and the second-network source switch controller.

22. (Original) The method of Claim 19, wherein said consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch controller.

23. (Original) The method of Claim 22, wherein said consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch further comprises:

receiving the second-network schedule from a data stream.

24. (Original) The method of Claim 18, wherein said associating the specific content with one or more times of one or more second network transmitted data portions further comprises:

associating the specific content with at least one absolute time associated with a clock.

25. (Original) The method of Claim 24, wherein said associating the specific content with at least one absolute time associated with a clock further comprises:

associating the specific content with at least one time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to some specified received data.

26. (Original) The method of Claim 24, wherein said associating the specific content with at least one absolute time associated with a clock further comprises:

associating the specific content with at least one absolute time associated with a transmitted clock.

27. (Original) The method of Claim 18, wherein said associating the specific content with one or more times of one or more second network transmitted data portions further comprises:

associating the specific content with at least one relative time.

28. (Original) The method of Claim 27, wherein said associating the specific content with at least one relative time further comprises:

associating the specific content with at least one time relative to a received marker.

29. (Original) The method of Claim 27, wherein said associating the specific content with at least one relative time further comprises:

associating the specific content with at least one time of a first and a second received marker.

30. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

agglomerating a portion of the at least one content received from the first network with a portion of the at least one content received from the second network.

31. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

interleaving a portion of the at least one content received from the first network with a portion of the at least one content received from the second network.

32. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

selecting data from at least one data stream having file-address-to-temporal- address translated data.

33. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

selecting data from at least one data stream having disk-address-to-temporal- address translated data.

34. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

selecting data from at least one data stream having tape-address-to-temporal- address translated data.

35. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

selecting data from at least one data stream having substantially static memory- address-to-temporal-address translated data.

36. (Original) The method of Claim 1, wherein said constructing the at least one content from the first network and the second network further comprises:

selecting data from at least one data stream having object-address -to-temporal- address translated data.

37. (Previously Presented) A system comprising:

means for receiving a request for data having at least one specific content;

means for obtaining one or more first-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

means for obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content;

means for applying the one or more first-network temporal addresses to receive a first part of the at least one specific content being transmitted from a first network and

applying the one or more second-network temporal addresses to receive a second part of the at least one specific content being transmitted from a second network; and

means for constructing the at least one content from the first part of the at least one specific content being transmitted from the first network and the second part of the at least one specific content being transmitted from the second network.

38. (Original) The system of Claim 37, wherein said means for receiving a request for data having at least one specific content further comprises:

means for receiving a request for at least a portion of recorded video.

39. (Original) The system of Claim 37, wherein said means for receiving a request for data having at least one specific content further comprises:

means for receiving a request for at least a portion of recorded audio.

40. (Original) The system of Claim 37, wherein said means for receiving a request for data having at least one specific content further comprises:

means for receiving a request for at least a portion of recorded audio and video.

41. (Original) The system of Claim 37, wherein the means for receiving a request for data having at least one specific content further comprises:

means for receiving a request for at least a portion of at least one of computer processable and network processable data.

42. (Original) The system of Claim 37, wherein said means for obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content further comprises:

means for associating the specific content with one or more times of one or more first network transmitted data portions.

43. (Original) The system of Claim 42, wherein said means for associating the specific content with one or more times of one or more first network transmitted data portions further comprises:

means for consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions.

44. (Original) The system of Claim 43, wherein said means for consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

means for consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller.

45. (Original) The system of Claim 44, wherein said means for consulting a first-network schedule published by at least one of a first-network source controller and a first-network source switch controller further comprises:

means for accepting input of the first-network schedule published by at least one of the first-network source controller and the first-network source switch controller.

46. (Original) The system of Claim 43, wherein said means for consulting a first-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

means for consulting a first-network schedule received from at least one of a first-network source controller and a first-network source switch controller.

47. (Original) The system of Claim 46, wherein said means for consulting a first-network schedule received from at least one of a first-network source controller and a first-network source switch controller further comprises:

means for receiving the first-network schedule from a data stream.

48. (Original) The system of Claim 42, wherein said means for associating the specific content with one or more times of one or more first network transmitted data portions further comprises:

means for associating the specific content with at least one absolute time associated with a clock.

49. (Original) The system of Claim 48, wherein said means for associating the specific content with at least one absolute time associated with a clock further comprises:

means for associating the specific content with at least one absolute time associated with an atomic clock time.

50. (Original) The system of Claim 48, wherein said means for associating the specific content with at least one absolute time associated with a clock further comprises:

means for associating the specific content with at least one time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to some specified received data.

51. (Original) The system of Claim 42, wherein said means for associating the specific content with one or more times of one or more first network transmitted data portions further comprises:

means for associating the specific content with at least one relative time.

52. (Original) The system of Claim 51, wherein said means for associating the specific content with at least one relative time further comprises:

means for associating the specific content with at least one time relative to a received marker.

53. (Original) The system of Claim 51, wherein said means for associating the specific content with at least one relative time further comprises:

means for associating the specific content with at least one time of a first and a second received marker.

54. (Original) The system of Claim 37, wherein said obtaining one or more second-network temporal addresses corresponding to the at least one specific content, in response to the request for data having the at least one specific content further comprises:

means for associating the specific content with one or more times of one or more second network transmitted data portions.

55. (Original) The system of Claim 54, wherein said means for associating the specific content with one or more times of one or more second network transmitted data portions further comprises:

means for consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions.

56. (Original) The system of Claim 55, wherein said means for consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

means for consulting a second-network schedule published by at least one of a second-network source controller and a second-network source switch controller.

57. (Original) The system of Claim 56, wherein said means for consulting a second-network schedule published by at least one of a second-network source controller and a second-network source switch controller further comprises:

means for accepting input of the second-network schedule published by at least one of the second-network source controller and the second-network source switch controller.

58. (Original) The system of Claim 55, wherein said means for consulting a second-network schedule having the specific content in association with the one or more times of the one or more transmitted data portions further comprises:

means for consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch controller.

59. (Original) The system of Claim 58, wherein said means for consulting a second-network schedule received from at least one of a second-network source controller and a second-network source switch controller further comprises:

means for receiving the second-network schedule from a data stream.

60. (Original) The system of Claim 54, wherein said means for associating the specific content with one or more times of one or more second network transmitted data portions further comprises:

means for associating the specific content with at least one absolute time associated with a clock.

61. (Original) The system of Claim 60, wherein said means for associating the specific content with at least one absolute time associated with a clock further comprises:

means for associating the specific content with at least one absolute time associated with an atomic clock time.

62. (Original) The system of Claim 60, wherein said means for associating the specific content with at least one absolute time associated with a clock further comprises:

means for associating the specific content with at least one time associated with at least one of an atomic clock, a global clock, a relative clock, a transmitted clock, and a number of ticks relative to some specified received data.

63. (Original) The system of Claim 54, wherein said means for associating the specific content with one or more times of one or more second network transmitted data portions further comprises:

means for associating the specific content with at least one relative time.

64. (Original) The system of Claim 63, wherein said means for associating the specific content with at least one relative time further comprises:

means for associating the specific content with at least one time relative to a received marker.

65. (Original) The system of Claim 63, wherein said means for associating the specific content with at least one relative time further comprises:

means for associating the specific content with at least one time of a first and a second received marker.

66. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for agglomerating a portion of the at least one content received from the first network with a portion of the at least one content received from the second network.

67. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for interleaving a portion of the at least one content received from the first network with a portion of the at least one content received from the second network.

68. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for selecting data from at least one data stream having file-address -to-temporal- address translated data.

69. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for selecting data from at least one data stream having disk-address -to-temporal- address translated data.

70. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for selecting data from at least one data stream having tape-address -to-temporal- address translated data.

71. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for selecting data from at least one data stream having substantially static memory-address -to-temporal- address translated data.

72. (Original) The system of Claim 37, wherein said means for constructing the at least one content from the first network and the second network further comprises:

means for selecting data from at least one data stream having object-address -to-temporal- address translated data.

73. (Previously Presented) A system comprising:

a temporal address unit configured to receive a request for a substance of data; and  
a data switch controller configured to:

generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance;

apply the one or more first-network temporal addresses to receive a first part of the at least one specific content from a first network and applying the one or more second-network temporal addresses to receive a second part of the at least one specific content from a second network; and

construct the at least one content from the first part of the at least one specific content from the first network and the second part of the at least one specific content from the second network.

74. (Original) The system of Claim 73, wherein said temporal address unit configured to receive a request for a substance of data further comprises:

a spatial-to-temporal address converter configured to receive a request for data in a spatial format.

75. (Original) The system of Claim 74, wherein said spatial-to-temporal address converter configured to receive a request for data in a spatial format further comprises:

a spatial-to-temporal address converter configured to receive a request for data in a spatial address device format.

76. (Original) The system of Claim 73, wherein said temporal address unit configured to receive a request for a substance of data further comprises:

a content-to-temporal address converter configured to receive a request for data in a content format.

77. (Original) The system of Claim 76, wherein said content-to-temporal address converter configured to receive a request for data in a content format further comprises:

a content-to-temporal address converter configured to receive a request for at least a part of recorded video.

78. (Original) The system of Claim 76, wherein said content-to-temporal address converter configured to receive a request for data in a content format further comprises:

a content-to-temporal address converter configured to receive a request for at least a part of recorded audio.

79. (Original) The system of Claim 76, wherein said content-to-temporal address converter configured to receive a request for data in a content format further comprises:

a content-to-temporal address converter configured to receive a request for at least a part of recorded audio and video.

80. (Original) The system of Claim 76, wherein said data switch controller configured to generate one or more first-network temporal addresses and second-network temporal addresses in response to the request for the substance further comprises:

said data switch controller configured to access a first-network content transmission schedule and a second-network content transmission schedule.

**APPENDIX B. APPENDIX OF EVIDENCE (NOT APPLICABLE).**

**APPENDIX C. APPENDIX OF RELATED PROCEEDINGS (NOT APPLICABLE).**